## REMARKS

Claim Amendments

Claims 1-44 were pending in the instant application. Claims 31-37 have been canceled without prejudice. Claims 1-5, 27-30 and 38 have been amended. New claims 45-53 have been added. Accordingly, claims 1-30 and 38-53 will be pending after entry of the instant amendment. Applicant reserves the right to prosecute the claims as originally filed in this or a continuing application.

Support for the claim amendments and new claims can be found throughout the claims and specification as originally filed. No new matter has been added.

Restriction Requirement

The Examiner has required restriction between the invention under 35 U.S.C 121 to one of the following groups:

**Group I**: Claims 1-7, 27-30 and 38-44, drawn to compositions and methods comprising an siRNA, classifiable in class 536, subclass 24.5.

**Group II**: Claims 8-18, drawn to methods of inhibiting the expression of more than one protein with a single agent, classifiable in class 435, subclass 6 and class 514, subclass 44.

**Group III**: Claims 19-26, 31-38, drawn to nucleic acid compositions and host cells, classifiable in class 536, subclass 23.1.

With respect to claims 2-4 and 28 of Group I, the Examiner further requires election of a single target CMV nucleic acid.

With respect to claims 11, 13, 17 and 18 of Group II, the Examiner further requires election of a single target CMV nucleic acid.

With respect to claims 19, 23 and 31 of Group III, the Examiner further requires election of a single nucleotide sequence/construct, *i.e.*, the nucleotide sequence of SEQ ID NO: 1 or SEQ ID NO: 2.

Applicants hereby elect the Group I invention (Claims 1-7, 27-30 and 38-44, drawn to compositions and methods comprising an siRNA) under 35 U.S.C. §121 for prosecution in the present application, *with traverse*. Applicants further elect a single target CMV gene of IE2 and a single RNAi agent nucleic acid sequence of SEQ ID NO: 2, *with traverse*. Applicants traverse the restriction requirement to the extent that the restrictions required by the Examiner to a single target CMV gene and single RNAi agent nucleic acid sequence are improper. The grounds for this traversal are set forth in more detail below.

Applicants respectfully assert that restriction between the target CMV genes is improper. In particular, Applicants assert that the subject matter encompassed by claims 2-4 and 28 (RNAi agents, and methods of use thereof, targeting CMV genes, *e.g.*, at least the CMV genes encoding the proteins lEl, 1E2, DNA polymerase, a scaffold protease, gB, and gH) represent different embodiments of a single inventive concept which merit examination in a single application. Applicants also note that an allowable generic claim (*i.e.*, claims 1, 5, 6, 27, 29 and 30, as amended) has been provided which links the target CMV genes. Applicants respectfully submit that restriction among target CMV genes is improper as generic claims 1, 5, 6, 27, 29 and 30 link the target CMV genes recited in claims 2-4 and 28. An examination of the generic claims will necessarily identify art relevant to the species recited in the dependent claims. It is Applicants' further position that the target CMV genes belong to the same search class (536) and the same subclass (24.5), and thus a literature search encompassing these genes would be nearly, if not completely, coextensive. Accordingly, the examination of these target CMV genes together in the present application would not place an undue burden on the Examiner, since the prior art searches for these species would be co-extensive.

In view of the foregoing, Applicants respectfully request that restriction under 35 U.S.C. §121 between target CMV genes be reconsidered and withdrawn.

Even if the restriction between target CMV genes is maintained, Applicants respectfully assert that the proteins IE1 and IE2 are encoded by a single nucleic acid (*i.e.*, the

genes UL122/UL123, which are a single gene encoding a single nucleic acid that is alternatively spliced to produce the two proteins) and thus are structurally related. Accordingly, the nucleic acid(s) encoding the proteins IE1 and IE2 should be examined together, *i.e.*, as a single target CMV gene.

Finally, at a minimum, Applicants respectfully assert that restriction between individual RNAi agents (and/or methods of using same) targeting a single CMV target gene is improper. It is Applicants' position that while a species election may be proper among the RNAi agents for prosecution on the merits to which the claims shall be restricted, if no generic claim is finally held to be allowable, an election under 35 U.S.C. §121 is improper. New claims 46-47 and 51-52 are directed to RNAi agents comprising the nucleic acid sequences of SEQ ID NO:1 and SEQ ID NO: 2 (nucleic acid sequences targeted to exon 3 shared by the CMV immediate early genes IE1 and IE2). With respect to these new claims, Applicants assert that claims 1, 5-6 and 38-40 are generic to the species of SEQ ID NOs: 1 and 2. In view of the foregoing, Applicants provisionally elect the ***species*** of the nucleic acid of SEQ ID NO: 2, for search purposes only.

With respect to the elected species, it is Applicants understanding that the election of a species and specific species is for searching purposes only. It is also Applicants understanding that upon allowance of the elected claims, the generic claims also will be searched and Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

Applicants reserve the right to traverse the restriction between the non-elected groups in this or a separate application.

Applicant believes no fee is due with this statement. However, if a fee is due, please charge our Deposit Account No. 12-0080, under Order No. UMY-079, from which the undersigned is authorized to draw.

Dated: **March 23, 2007**

Respectfully submitted,

By _____

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